

COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
4110 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030-4048
703-246-2770

JOHN T. FREY
CLERK OF CIRCUIT COURT

JANE M. DELIEE
CHIEF DEPUTY

Dear Circuit Court Patron:

My staff and I are dedicated to trying to provide the best possible service to those using the Court. With this goal in mind, we have developed the attached handout to help you in obtaining a divorce. The handout consolidates all of the information that my office can legally provide to the public. Virginia law prohibits my staff from providing legal advice. Therefore, please **DO NOT** ask the Clerk's Office personnel for legal advice.

You are responsible for preparing all the necessary documents for your case. It should be noted that there are no fill-in-the-blank forms for divorce.

This handout is **not** intended to replace competent legal advice. In fact, I strongly recommend that you hire an attorney to represent you in this matter.

It is my sincere hope that this information will help make the divorce process easier and less time-consuming for you.

Sincerely,

John T. Frey, Clerk
Fairfax County Circuit Court

PRO SE DIVORCE SUITS

PRO SE or NO-FAULT divorce suits are best suited for couples who completely agree to get a divorce. If you have children or property, or are alleging fault by your spouse, retaining an attorney may best protect you. If you do not know your spouse's whereabouts, or if he/she is in jail for committing a felony, you should hire an attorney.

All persons involved in divorce cases are strongly encouraged to consult with an attorney so that the legal effects of these proceedings can be fully explained to each litigant. **IF YOU PROCEED WITHOUT LEGAL COUNSEL**, you may forever unknowingly waive your rights to custody or visitation, child or spousal support, equitable distribution of property, and other legal claims arising out of your marriage.

The Clerk's Office cannot make recommendations for specific attorneys, but you can call:

The Virginia Lawyer's Referral Service
1-800-552-7977

Or

The Fairfax Bar Association Lawyer Referral Service
703-246-3780

If you decide to proceed on your own, you will be expected to follow the same procedures as an attorney. It may take three to six months to complete your divorce if there are no complications.

Please be aware the Clerk's Office have no specific forms to fill out for your divorce. You are responsible for preparing all documents pertaining to the divorce. Please **DO NOT** ask Court personnel for legal advice or assistance. Court personnel are prohibited by state law to give you legal advice or assistance.

Before you file for divorce, you may wish to review the appropriate divorce laws in the Virginia Code. The Virginia Code books are located in the Law Library at the Judicial Center and at Regional and Community Library locations. A review of these laws may help you better understand the divorce process.

All parties involved in divorce cases can present evidence on the grounds for divorce to one of the Court's Commissioners in Chancery. If all issues, such as grounds for divorce and distribution of property, are totally uncontested, a party may, by filing a Request of Ore Tenus Hearing, request a Judge of the Court to hear the evidence ore tenus (in Court).

PROCEDURE

STEP ONE:

In order for you to obtain a divorce in Virginia, either you or your spouse must be a resident of the Commonwealth of Virginia for at least six months prior to filing suit.

In your **Bill of Complaint** you must allege specific grounds upon which a divorce may be granted. The two most common situations or grounds for no-fault divorces are a six-month separation or a one-year separation. You are eligible for a six-month divorce if you have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties. Both of these facts must be stated in the Bill of Complaint. You and your spouse must have been separated for the required amount of time prior to filing your suit for a six-month or one-year divorce. This separation period must also be clearly alleged in your Bill of Complaint. You may **NOT** file your documents before the appropriate separation period has expired or your case could be dismissed. If the case is dismissed you will have to file for divorce again and pay another filing fee. You can also file several types of fault divorces, which are treated differently than no-fault divorces.

In addition to stating the grounds and residency requirements, the Bill of Complaint must also include the following allegations:

- current residences of both parties
- each party's, social security number or VA driver's license number
- the date and place of marriage
- the names and dates of birth of all minor children born or adopted into the marriage
- a statement that both parties are over eighteen (18) years of age
- a statement of each party's military status

PLEASE REMEMBER

- You will be representing yourself.
- The Clerk/Court cannot advise or represent you.
- Your documents must be typed double-spaced on 8 1/2" by 11" white paper.
- If you send any documents to the Court, mail them to:
Clerk of the Circuit Court
4110 Chain Bridge Road
Fairfax, Virginia 22030
Attention: Civil Case Processing
- All hand carried materials should be delivered to the Clerk's Office Civil Division counter on the third floor of the Judicial Center.

STEP TWO: PREPARING & FILING YOUR BILL OF COMPLAINT

1. The complainant must file the following documents:
 - ❑ An Original Bill of Complaint and one copy of the Bill of Complaint for service.
 - ❑ A completed VS-4 form. This form is a statistical form that is required for all divorce filings before the divorce can be finalized. It must be completed properly in black ink (The VS-4 Form may be obtained from the Clerk's Office)
 - ❑ Two copies of the Divorce Case Coversheet
 - ❑ **Filing fees and Sheriff service fees, if applicable. All Filing fees and Sheriff Service Fees are paid by cash, certified check or money order payable to the Clerk of the Circuit Court.**
2. **INITIAL FEES:**
 - \$69.00 filing fee
 - \$12.00 Sheriff fee, if applicable to serve the Bill of Complaint if the Defendant lives in Virginia
 - \$21.00 filing fee to resume Maiden Name
3. Your case will be given a Chancery Number as soon as it is filed. This is the number by which the Court references your case and it must appear on all documents regarding your divorce.
4. After you file the Bill of Complaint you must determine how the Defendant will be served with the Bill of Complaint. The Bill of Complaint may be served by methods specified pursuant to §8.01-296 by a Sheriff or Person authorized to do service in accordance with §8.01-293. If service is to be by Sheriff or Private Process Server, you must request the Clerk to prepare a Subpoena in Chancery. If you arranged for this service, the Sheriff or Private Process Server will receive a Subpoena in Chancery Notice and a copy of the Bill of Complaint to serve on the Defendant.

The Defendant may also accept legal service of the Bill of Complaint by signing a notarized statement that he/she has received a copy of the Bill of Complaint. This may be done before any Notary Public or Deputy Clerk in the Clerk's Office. Once they have been served, the Defendant has 21 days to respond to the Bill of Complaint. Or the Defendant may accept service by checking the appropriate box on the "Acceptance/Waiver of Service of Process and Waiver of Future Service of Process and Notice" - Form CC-1406. This form can be accessed through the Web Site of the Virginia's Judicial System at:

<http://www.courts.state.va.us/forms/circuit/CC-1406Rev-1.pdf>

See information regarding all types of service at the end of this brochure.

5. After the service, the Defendant may choose to waive further notice of the proceedings by executing a waiver form (Form CC-1406). A copy of this form is available in the Clerk's Office. The form must be signed under oath in front of a Notary Public or Deputy Clerk of the Circuit Court. (Note: The Waiver of Notice cannot be executed prior to the filing of the Bill of Complaint.)

STEP THREE- PROCEEDING WITH DIVORCE:

The Complainant will have the option of proceeding as follows:

- Before a Commissioner in Chancery; or
- Ore Tenus hearing before the Court; or
- By taking evidence through deposition and submitting the deposition and a proposed Final Decree of Divorce.

CONTESTED DIVORCES: a Commissioner in Chancery will handle All contested divorces.

If there are any property rights to be resolved, and the parties desire to put on evidence of facts and circumstances leading to the dissolution of the marriage, the case will still be heard by a Commissioner along with the grounds for divorce.

UNCONTESTED DIVORCES: The only cases that shall be allowed to proceed by **Ore Tenus** hearing or by **deposition** shall be purely uncontested matters. These are matters where all property, custody, child support and spousal support rights are resolved, and neither party is going to put on any fault grounds for divorce, and where neither party is going to put on any evidence of the facts and circumstances leading to the dissolution of the marriage.

Restoration of Former Name - §20-121.4: If one of the parties requests in the Bill of Complaint to resume their maiden name or former name an additional fee for recording of a name change is required. Upon entry of a final decree of divorce from the bond of matrimony the court shall, on motion of a party who changed his or her name by reason of the marriage, restore the party's former name or maiden name by separate order meeting the requirements of §8.01-217. Upon entry of the Name Change Order - this order will be spread upon the Land Records as required.

A. COMMISSIONER'S HEARING

For the Court to assign a Commissioner in Chancery to hear your case, you must submit a **Decree of Reference**. The Commissioner is a local attorney appointed by the Court to hear the evidence in the divorce case. The commissioner's fee, which varies, is paid by the Complainant. This Commissioner reports upon the matter to the Court and makes a recommendation as to whether or not a divorce should be granted.

You may submit the Decree of Reference to the Court 21 days after the Defendant has been served with the Bill of Complaint, or once an answer has been filed. It is your responsibility to keep track of this time period; the Court will **not** notify you.

You must send notice of the presentation of the Decree of Reference by completing a **Certificate of Mailing**. This statement which appears at the end of the document certifies that you have mailed a copy of the Decree of Reference to the Defendant. The Certificate of Mailing must include the following:

- the Defendant's name
- the date you mailed the Decree of Reference
- the address to which you mailed the Decree of Reference
- your signature

A. COMMISSIONER'S HEARING CONTINUED:

Seven to ten days after filing the Decree of Reference, you must call (703) 691-7320, press 3,1,0 to receive the name and phone number of the Commissioner who has been appointed; you must contact him/her to arrange a time for your hearing. After the hearing date is set, you must serve the Defendant with a **Notice of Commissioner's hearing** stating the date, time and place of the hearing in accordance with §8.01-296. Should the defendant not be given sufficient notice, you may be required to reschedule your hearing in order to give him/her enough time to prepare.

AT THE COMMISSIONER HEARING

You must be prepared to present evidence to support every allegation in your Bill of Complaint. You must also bring a witness to corroborate your testimony. Many Commissioners question you and your witness to elicit testimony. Some Commissioners may require you to present all of the evidence and to question the witness yourself.

After the hearing, the Commissioner has 30 days to submit his/her report to the Court. The Commissioner will notify you and the Court once the report has been filed. You will receive a copy of this report.

FINAL DECREE: You may prepare and file your **Final Decree of Divorce** once you receive the Commissioner's Report. This Decree must re-allege all the basic information stated in the Bill of Complaint and order that the Divorce is granted in accordance with the Commissioner's recommendations. You must sign the Final Decree of Divorce and submit it to the Court for entry by a Judge. If the Defendant refuses to sign the Decree, you will have to serve him/her with notice to appear in Court on a Motions Day to enter the Final Decree. There are specific Motions Day procedures which **must** be followed. You may pick up an outline of these procedures at the Clerk's Office Civil Division counter on the third floor of the Judicial Center. Or you can access the information on the Courts web site at:

<http://www.fairfaxcounty.gov/courts/circuit/CCR-E-05.htm>

B. ORE TENUS HEARING

If all issues are uncontested, a party may request to have the Court hear evidence by Ore Tenus. You may pick up an outline of the Ore Tenus guidelines and request for Ore Tenus hearing form at the Clerk's Office Civil Division counter on the third floor of the Judicial Center. Or you can access the information on the Courts web site at:

<http://www.fairfaxcounty.gov/courts/circuit/pdf/CCR-H-50.PDF>

At the time the Request for Ore Tenus Hearing is filed, the party filing the Request **must** submit with the request, the original proposed Final Decree of Divorce and a copy of any Property Settlement Agreement the parties may have executed. The Decree must contain the endorsement of each party who is legally entitled to notice of the ore tenus hearing and who will not be appearing at the hearing, unless the moving party will be serving the proposed Decree on that party along with the Notice of the date and time of the ore tenus hearing. **The original of any Property Settlement Agreement should be presented to the Court at the ore tenus hearing.**

B. ORE TENUS HEARING CONTINUED:

Upon filing of a Request for Ore Tenus Hearing, the file will be forwarded to one of the judges' law clerks for review of all pleadings, including the proposed Final Decree of Divorce, to assure compliance with all statutory requirements. The law clerk will advise counsel for the moving party or the moving party if the litigant is proceeding without counsel, in writing, as to the sufficiency of the pleadings.

- 1) If the law clerk has advised that the pleadings comply with all statutory requirements the moving party must contact the ore tenus clerk within fourteen calendar days of the date of the written notice, at (703) 246-4200 to schedule the hearing. If required by law, notice of the date and time of the hearing must be served on the other party.
- 2) If the pleadings do not comply with all legal requirements, the law clerk will mail the Court's Rejection of Ore Tenus Filing Form (Rejection Form) to the moving party. The moving party will then have up to fourteen days from the date of the Rejection Form to correct all deficiencies. Upon making the required correction the moving party shall return the corrected pleadings along with the bottom half of the Rejection Form fully completed to that law clerk. All corrections must be received within the fourteen-day period and should be addressed to the specific law clerk that signed the Rejection Form c/o the Clerk of the Circuit Court of Fairfax County. **Simply filing or mailing the correct pleadings to the office of the Clerk of Court, without including the bottom half of the Rejection Form and noting that they are to be forwarded to the specific law clerk, will not be sufficient.**

All communications with the Judges' law clerks must be in writing and limited to the matters set forth in the law clerk's postcard. Telephone calls relating to ore tenus cases will not be received by the law clerks. Furthermore, since the law clerks are not permitted to give legal advice to attorneys or to pro se parties, requests for such advice will not be entertained.

If the revised pleadings comply with all statutory requirements, the law clerk will so advise you in writing and you must then contact the ore tenus clerk within fourteen days of the date of the law clerk's postcard to schedule your hearing.

If the revised pleadings do not meet all statutory requirements, or if the moving party has not scheduled the ore tenus hearing within fourteen days of the date of the law clerk's postcard, the parties will thereafter have to proceed to present the evidence in support of the grounds for divorce to a Commissioner in Chancery.

AT THE ORE TENUS HEARING:

The hearing before the Judge is approximately ten minutes. You must be prepared to present evidence to support every allegation in your Bill of Complaint through the testimony of yourself and a corroborating witness. You must bring the witness with you at the time of the hearing; it is your responsibility to make certain that your witness can be present on the hearing date. The corroborating witness should have direct knowledge of the matters to which they will testify. The witness' knowledge must be based on something more than the information you give the witness in preparation for the hearing. The presiding Judge cannot serve as an attorney, and the moving party must be prepared to ask the relevant questions.

B. ORE TENUS HEARING CONTINUED:

FINAL DECREE:

If all legal requirements have been satisfied the Judge will generally enter the **Final Decree of Divorce** at the Ore Tenus hearing. If your case requires the presence of the Court Reporter at the hearing pursuant to Rule 2:17 your final decree will not be entered until the transcript of the hearing is filed with the Circuit Court. Upon receipt of the transcript, the Final Decree along with the transcript is submitted to the Judge that heard the matter at the Ore Tenus hearing as a daily order.

C. DEPOSITION HEARING

The procedure for handling uncontested divorces by deposition shall be similar to that in surrounding jurisdictions, wherein either party or their counsel shall send proper notice of a deposition and have the deposition taken before a Court reporter and put on evidence of the no-fault divorce at the deposition with sufficient corroboration. Thereafter, the transcript of the deposition shall be prepared and either reviewed by the witnesses or waived in accordance with the statute.

FINAL DECREE: The **Final Decree of Divorce** along with the transcript is submitted to the Court for entry as a daily order.

STEP FOUR: ENTRY OF FINAL DECREE

Once a Judge has signed your Final Decree of Divorce, the Complainant will receive a certified copy from the Court. **To receive this copy**, you must include a self-addressed, stamped envelope when filing the final decree of divorce.

If you would like to call and check on the status of a case, call Civil Case Information at:

(703) 691-7320
Press 3,1,0

If you have any questions concerning this handout, please call (703) 691-7320 press 3,1,4,0. The Clerk's office hopes this information is helpful, but please remember that the Clerk's staff **CANNOT** give you any legal advice.

SERVING THE DEFENDANT WITH THE BILL OF COMPLAINT

Process in a divorce case may be served by the methods specified in Va. Code §8.01-296:

- personal service,
- posting on the residence, or
- service on a member of the household over sixteen years old.

Service may be by a Deputy Sheriff or a person authorized to serve process under Va. Code §8.01-293. If service is by Sheriff or Private Process Server you must request the Clerk to prepare a Subpoena in Chancery to attach to the Bill of Complaint.

A Defendant may also accept service pursuant to §20-99.1:1 by signing a proof of service or an Acceptance of Service indicating that the defendant has received the papers in the suit.

TYPES OF SERVICE

ACCEPTANCE OF SERVICE:

- Pursuant to Va. Code §20-99.1:1, a Defendant may accept service by signing a proof of service or an Acceptance of Service indicating that the defendant has received the papers in this suit. This form of service must be made under oath before a notary public or deputy clerk.

SHERIFF SERVICE:

- If the Defendant lives in the Commonwealth of Virginia, a Virginia Sheriff can serve them by including the Sheriff's fees in the initial filing.
- If the Defendant is a non-resident of Virginia, you will need to contact the Sheriff's department of the county in which your spouse resides in order to find out local regulations for service. You may wish to have the Defendant accept out-of-state service.

The Sheriff will give the person that is being subpoenaed a copy of the Bill of Complaint and the Subpoena in Chancery 21 day Notice. The Sheriff will execute the Proof of Service on the bottom portion of the Subpoena and Chancery and shall file the Proof of Service with the Clerk of the Court where the matter is pending within seventy-two (72) hours of service.

Fee for Sheriff service: \$12.00 for each service
Payment is made by certified check or money order payable to:

Clerk of the Circuit Court

PRIVATE PROCESS SERVICE:

- The Private Process Server will give the person that is being subpoenaed a copy of the Bill of Complaint and the Subpoena in Chancery 21 day Notice. The Process Server will execute an Affidavit of Service and shall file the Affidavit with the Clerk of the Court where the matter is pending within seventy-two (72) hours of service.
- Return by person serving process §8.01-325 – “If service by any other person qualified under §8.01-293, whether service made in or out of the Commonwealth, his affidavit of such qualifications; the date and manner of service and the name of the party served; and stamped, typed or printed on the return of process, an annotation that the service was by a private server, and the name, address and telephone number of the server.”

The Affidavit by Private Process Server must include the following:

- Having been duly authorized to make service in accordance with §8.01-293.
- State the Date of Birth of the process server or that the person is over eighteen years of age.
- State that the person serving the process is not a party or otherwise interested in the subject matter or controversy. (§8.01-293)
- The date and manner in which service was made
- The name of the party served.
- If the party being served is an agent for a business, state in addition the name of the business.
- An annotation that service was by private process server
- Name, address and telephone number of private process server

SERVICE BY PUBLICATION:

Service may be effected by an order of publication on a non-resident or on a defendant who's whereabouts with due diligence cannot be ascertained pursuant to Va. Code §20-10.

A publication can be done in any Newspaper where the newspaper has been authorized by this Court to print legal notices and publications in accordance with §8.01-324.

An Order of publication shall be published in a newspaper prescribed by the court pursuant to §8.01-317. The amount of times that the publication is in the newspaper is prescribed by statute. The Court currently utilizes the Fairfax Journal and the Washington Times.

Northern Virginia Journal	\$25.00
Washington Times	\$25.00
(Rates are subject to change)	

Forms for Affidavit and Order of Publication can be obtained by Clerks Office or can be accessed on the Courts web site at:

<http://www.fairfaxcounty.gov/courts/circuit/CCR-H-46-47.pdf>

SERVICE BY PUBLICATION CONTINUED:

REQUIRED DOCUMENTATION

- ☐ Original Order of Publication
- ☐ Affidavit notarized by complainant or attorney

AFFIDAVIT MUST STATE THE FOLLOWING:

- ☐ the individual is a non-resident individual, or
- ☐ cannot be found, that due diligence has been used without effect to ascertain the location of the party to be served, or
- ☐ cannot be served with court process, and that a return has been filed by the Sheriff which shows that the process has been in his or her hands for twenty-one (21) days and the Sheriff has been unable to make service
- ☐ An envelope addressed to the individual being served by publication at their last known address, if known.
- ☐ A completed certified mail receipt or registered mail receipt and appropriate fees for such mailing.
- ☐ A copy of the pleading to be served by publication.

For publications for the Fairfax Journal or Washington Times, you must submit a check payable to the specific newspaper. *If additional fees required, the newspaper will bill the petitioner or counsel.*

Publication in a Newspaper other than the Fairfax Journal or Washington Times, the petitioner must make specific arrangements with that newspaper. The Court will process the Order of Publication documentation, but the petitioner will be required to make arrangements to have the documentation delivered to the newspaper for publication.

Upon completion of such publication, the publisher giving the dates of publication and a copy of the published order in accordance with §8.01-325 by affidavit or "proof of publication" will file the said document with the Clerk of the Court. The Clerk upon receipt of the "proof of publication" shall complete a certificate of compliance in the case file in accordance with §8.01-317.

If service on the Bill of Complaint is made by publication, at the divorce hearing a Court Reporter is required in accordance with Rule 2:17. The plaintiff is responsible for making arrangements for a court reporter to be present.